

# Electronic Hearings

## Frequently Asked Questions

What is the difference between the Federal Court of Australia electronic hearing procedure and an ordinary video link hearing?

The FCA electronic hearing procedure is substantially the same as an ordinary video link hearing.

It includes the following enhancements:

- (a) Practitioners and witnesses access Microsoft Teams on a desktop computer in their preferred web browser using a link provided by the Court, or using the Microsoft Teams app on their preferred iOS or Android device by registering a free account.
- (b) Electronic copies of documents may be passed between participants (and/or tendered) using Dropbox or a similar platform, in accordance with the arrangements advised by the presiding judge.

What do practitioners need to participate in an electronic hearing using Microsoft Teams?

All that is needed to connect to the conference is a computer/laptop which is connected to the internet with a working internal camera and microphone. It would also be helpful to have a second screen set up to look at documents etc.

Who should I contact to see if this can be used at an upcoming hearing or if I have any questions?

The chambers of the docket judge should be your first point of contact. They will let you know whether they are using Microsoft teams and if they have the equipment needed to run the program from their end.

What happens if there are issues during the electronic hearing?

Issues will be addressed as they would during an ordinary video link hearing, that is, as and when they arise, and with the goodwill of all of the participants.

Participants will have the opportunity to test the facility and familiarise themselves with its features before the hearing. A representative 10-minute excerpt from an electronic hearing before Perram J is available [here](#).

What legislative provisions allow for an electronic hearing?

Sections 47A to 47F of the *Federal Court of Australia Act 1976* (Cth) provide for the conduct of hearings by video link, audio link, or other appropriate means on the application of a party to the proceedings or on the Court's or Judge's own initiative.

Rules 5.04(3) (item 27) and 1.40 of the *Federal Court Rules 2011* (Cth) also provide for the Court to make directions for the management, conduct and hearing of a proceeding on its own initiative or on the application of a party or a person who has a sufficient interest in the proceeding.

## Is it permissible to record some or all of the electronic hearing?

No. A hearing in the Court that is directed to be conducted by way of video link, audio link or other appropriate means remains a hearing in the Court.

Rule 6.11(3) of the *Federal Court Rules 2011* (Cth) provides that a person must not use a recording device for the purpose of recording or making a transcript of the evidence or submissions in a hearing in the Court.

## How are witnesses called?

Before the electronic hearing, practitioners arrange for their witnesses to be forwarded the link to Microsoft Teams and to conduct any practice sessions as desired. Practitioners should ask their witnesses whether they will give evidence on oath or affirmation (if oath, practitioners should ensure a religious text is physically present).

During the electronic hearing, practitioners call witnesses in the usual way. The witness will join the hearing as a participant using Microsoft Teams. The Court will administer an oath or affirmation, and practitioners examine the witness in the usual way. When the witness is excused, the witness may disconnect.

## How are documents put to witnesses and tendered?

Practitioners are given access to a shared folder (eg Dropbox) to which electronic copies of documents can be uploaded by practitioners. Documents placed in the shared folder by practitioners are treated in the same way as documents placed on the bar table. This can be done at any time during the electronic hearing.

If a document is to be shown to a witness by a practitioner, the witness or the witness's assistant will open the document in the shared folder on the witness's computer when indicated to do so by the practitioner.

If a document is to be marked for identification or tendered by a practitioner, the Judge's Associate will copy the document from the shared folder to a read-only court folder. Documents copied to the read-only court folder are treated as documents marked for identification or tendered as appropriate.

## How is the "chat" function to be used?

The "chat" function is for practitioners' convenience. It should be treated in the same way as comments made sotto voce between practitioners in open court to which no particular attention will necessarily be paid by anyone but that might be overheard.